IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Income Tax Appeal No. 59/2004
Commissioner of Income Tax- I vs. M/s Dinshaw Frozen Foods, Nagpur

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Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande & R.V.More,JJ
DATE OF RESERVING : 3.8.2007
DATE OF PRONOUNCEMENT: 21.11.2007

Heard Mr. Anand Parchure, learned counsel for the appellant and Mr. K.P.Dewani, learned counsel for the respondent.

2. By this appeal the revenue takes exception to the order dated 29th December 2003 passed by the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur (ITAT for short) in ITA No. 13/Nag/2001.

3. The revenue preferred the above appeal against the order dated 21.11.2001 passed by the CIT (A) by which the CIT allowed the assessee deduction under Section 80 AI of the Income Tax Act and by the said order the Tribunal also directed the A.O. to deduct interest paid at Rs. 76,555/- on cash credit of Rs. 3.65 lacs. In so far as the deduction under Section 80 IA is concerned the Tribunal relied upon the decision given by the Tribunal in assessee's own case

for assessment year 1997-98 by which the Tribunal had held that the deduction under Section 80 IA having been allowed to the assessee by assessing officer in the initial year i.e. 1992-93 he was not justified in denying such deduction in the subsequent years. Reliance was placed by the Tribunal upon the decision of this Court in CIT vs. Paul Brothers ((216 ITR 548).

4. In so far as disallowance of interest on cash credit is concerned, the Tribunal observed that in the assessment year 1997-98 the assessee had challenged addition made by the assessing officer under Section 68 on account of the said cash credit and that Tribunal in its order dated 27.6.2003 had held that addition made by the assessing officer was not warranted. The Tribunal upheld the order of CIT (A) deleting the said addition made in assessment year 1997-98. The Tribunal, therefore, held that the basis on which the interest was disallowed by the assessing officer in the year under consideration no more survived and consequently interest paid by the assessee on the concerned cash credit was held to be genuine and accordingly allowed.

5. Mr. Anand Parchure, learned counsel appearing for the revenue submitted that the assessee does not carry out the activities in manufacturing process and as such CIT as

well as ITAT have erred in allowing the claim of the assessee under Section 80 IA of the Act. In support of the submission that the activities carried out by the assessee in its dairy division are not manufacturing activities and as such deduction under Section 80 IA of the Act could not have been allowed in favour of the assessee. Mr. Parchure relied upon several authorities. We do not deem it appropriate to refer to them in view of the order we propose to pass. Mr. Parchure further submitted that the revenue did not challenge the order passed by the assessing officer granting deduction under Section 80 IA of the Act for the initial assessment year 1992-93 since the tax effect was quite low.

In so far as the direction to allow interest paid on cash credit is concerned Mr. Parchure submitted that the CIT as well the Tribunal erred in allowing deduction claimed by the assessee in respect of the payment of interest on cash credit since genuineness of cash credit was itself disputed.

6. Mr. K.P.Dewani submitted that the impugned order passed by the ITAT cannot be faulted inasmuch as the Tribunal has relied upon the decision of this Court in CIT vs. Paul Brothers (supra) in terms of which if certain deduction is permitted in a particular assessment year, the same could not have been disallowed for subsequent assessment years.

7. In so far as the deduction claimed by the assessee in respect of the payment of interest on cash credit is concerned, Mr. Dewani submitted that Tribunal was right in holding in favour of the assessee in view of its order dated 27.6.2003 by which appeal filed by the assessee for the assessment year 1997-98 was allowed. He further submitted that no substantial question of law is involved in the present appeal and, therefore, the appeal deserves to be dismissed.

8. Having considered the submissions made by the learned counsel for the parties and having perused the record we find no merit in the present appeal. The Tribunal was legally justified in placing reliance upon the judgment in CIT vs. Paul Brothers (216 ITR 548) and holding that once deduction under Section 80 IA was allowed by the assessing officer in the initial assessment year i.e. 1992-93 there was no justification in denying such deduction in the subsequent years. We find no merit in the submission of Mr. Parchure that the revenue was justified in not challenging the order passed by the assessing officer allowing deduction under Section 80 IA for the year 1992-93 on the ground that the tax effect was quite low. The revenue ought to have been aware that in case deduction was allowed in a particular year same could not have been denied during subsequent

assessment years. The revenue ought to have, therefore, challenged the order passed by the assessing officer in the assessment year 1992-93. The revenue having not done so we are of the considered opinion that no fault can be found with the order passed by the Tribunal which is impugned in the present appeal. Since we are dismissing the appeal by placing reliance upon the Judgment in CIT vs. Paul Brothers (supra) we do not deem it necessary to go into the issue as to whether the activities carried out by the assessee in dairy division constitute manufacturing activities or not. We do not deem it necessary to refer to several authorities relied upon by Mr. Parchure in support of the submission that the activities carried out by the assessee are not manufacturing activities.

9. In so far as the order passed by the Tribunal confirming the order passed by the CIT permitting the deduction claimed by the assessee in respect of interest on cash credit is concerned we find that the Tribunal was justified in relying upon its own order dated 27.6.2003 by which addition made by the assessing officer was held to be unwarranted. We are, therefore, of the considered opinion that there is no illegality or perversity in the order passed by the Tribunal warranting interference in appeal under Section 260 A of the Act. We also find that no substantial question of law is involved in the present appeal. Hence the

appeal is dismissed.

Judge **Judge**

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